Marcy (H.O.)
MEDICAL LEGISLATION,

THE ANNUAL ADDRESS

DELIVERED BEFORE THE

Association of American Medical Editors,

By HENRY O. MARCY, A.M., M.D.,

BOSTON, U. S. A.,

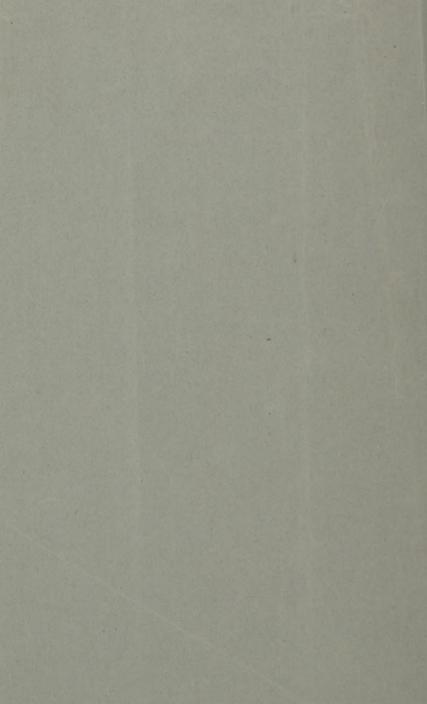
President Association American Medical Editors, President of the Boston Gynæcological Society; late President of the American Academy of Medicine; Member of the International Medical Congress; Member of the British Medical Association; Member of the Massachusetts Medical Society; Corresponding Member of the Medico-Chirurgical Society of Bologna, Italy; Late Surgeon U. S. A., etc.

Read before the Association of American Medical Editors, April 27, 1885.

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In our modern civilization the public press holds and wields a power in the development of thought and shaping of opinions, equalled by no other of all the complex forces of government. This power is so omnipresent and farreaching, that the village or hamlet is indeed very remote that does not receive and discuss the dominating thoughts of the world's great centres of civilization, within the day upon which they are first published. We do not wonder that journalism makes a large bid for the best talent. or that it has been the highest ambition of many of our most learned men to spend their lives in addressing unseen audiences, moulding the wellsprings of human thought through this magic of the black art. The fundamental principles for the right government of the public press, in a free country, must ever be simple and may be abstractly stated, as the attainment of the highest good of the individual. Thus, upon all general questions there must ever be a commonality of interest; and press associations are eminently proper and profitable.

In a great and rapidly growing country, like America, the medical press is, in a specialistic way, of equal influence in the diffusion of knowledge, the elevation of the standard of attainment, and, in a generous rivalling, developing a spirit of noble brotherhood in the profession. In this spirit this Association was founded. Let its

members see to it that, as the American Medical Association has grown in influence and power, so may these annual meetings of medical editors prove a source of inspiration, of energizing force and influence.

Every physician contemplates with satisfaction the progress made in his profession within the last generation, the rapid strides towards a true scientific foundation upon which to build more broadly the superstructure of the healing art. The lawyer does not deem it necessary to confine himself alone to his specialistic study and practice; the rather does he find it to his professional advantage to enter the public arena and become, if possible, the leader in every public work which holds an interest to the community in which he resides. From another platform, he who administers to us in sacred things is not alone the guide to holy living, but is expected to take into review all the general questions affecting the welfare of the race, and pass thereon a more or less critical opinion. The physician, however, who broadens out his phylacteries beyond the physical well being of the community, does so at the peril of his professional reputation and pecuniary sacrifice.

For this the profession holds no cause of complaint. The rather do its members the more willingly sacrifice at the shrine of their devotion all other ambitions as unholy, unworthy to be weighed in the balance, but minister to wrecked bodies and broken spirits for their mutual rebuilding, more or less closely copying the model of the Great Master. However varied the problems and kaleidoscopic the changes, there is always centered therein the fixed factor, the unknown quantity of the equation, life itself. In the true teaching the disciple of such a calling must have a thorough and generous general education, and the medical colleges are now yearly demanding in preparatory training a

higher standing of medical attainment. What shall be the standard of medical knowledge before graduation to practise the art and assume the responsibilities of life itself, in comparison with which every other consideration pales into insignificance? This question has very properly been relegated to the profession, since it can be wisely determined by no other tribunal; but can any subject be of an interest more vital to the well being of the individual or to the community? The relation of the physician to the public is a theme never lacking in interest, and very properly, since under his ministrations we are ushered into existence, our follies and their penalties intrusted to his knowledge and care, the serious infractions of our physical laws readjusted by his skill, and our latest agonies watched over, as the mysteries of our being again become shrouded in the impenetrable veil of the future. This leads me to certain phases of the converse of the proposition: "The Relation of the Public to the Physician," and this, from the legal standpoint, is the theme to which I would to-night invite your most serious consideration. In the first place, the demand for the education of the physician has been publicly recognized by the establishment and, in part, maintenance of medical schools and colleges; this in common with the general requirements of the other learned professions. Of course, this has been in large measure moulded and the material equipment furnished by the profession itself much more largely than in any other class of special training. America must be judged, however, from a different standpoint than Europe, since here, beyond the general system of fundamental teaching, the state has left the supervision of the higher education almost entirely to private parties, under corporation privileges and restriction, rather than by fostering their support. Gifts, other than from medical men, in large amount, for the better education of physicians are, in America, very exceptional. The Johns Hopkins University, owing to the extraordinary liberality of its founder, gives promise of splendid advantages in its medical and biological teaching. The recent munificent gift to the College of Physicians and Surgeons of New York, of America's railroad prince, Wm. H. Vanderbilt, is a splendid recognition of the value for the public good which a liberal-minded citizen places upon the right training of medical students. Although we sadly lack in America the great central universities for the higher training which so justly distinguishes the older European civilizations, it cannot be said that our country is wanting in number, at least, of medical schools and colleges. For many reasons not pertinent to our present inquiry, we can but think that the supply, such as it is, has greatly exceeded the demand. From the above and other reasons, which, with equal pertinency, might be offered, it is not difficult to accept as fact that there is, by the public, a general recognition and demand that those who make it their profession to attend upon the sick, should have special training therefor. The recognition of this special fitness has been openly expressed by the granting of so-called "degrees" by the schools, which are, in turn, under the guidance and control of the various state governments. So that a degree is, by so far at least, an official state recognition of the holder as commissioned to practise his calling. The title of "Dr.," once given, clings to its possessor with the pertinacity of fate. No matter how early he relinquishes his profession, or what his subsequent career, like the little brown jug of poetic history, this convenient handle is never disassociated from his name. If it is really true that the public hold the title of "Dr." in such affectionate and high regard, it would seem that they should

grant it to none unworthy, and, like the judges of the Supreme Courts, allow its possessor to hold office only during good behavior. That they have just reason to regard the value of medical service there can be no question. The medical profession, in all ages and countries, has been recognized as public-spirited, devoted to the general good, the prevention as well as cure of disease. The greatest gain in modern medical science has undoubtedly been in the self-sacrificing dangerous study of the causes of disease, and preventive medicine has developed into a branch now universally called sanitary science. Can anyone overestimate the incalculable advantage to the state of Massachusetts, which has resulted from the untiring industry, devotion, and genius of a Bowditch, a Derby, a Folsom, a Wolcott, and many others, in developing a state medicine which has given to our old commonwealth fame and made her methods models, in Europe as well as in America!

The limitation of legislative enactments for the protection of the individual has been and ought ever to be a question of the greatest interest. This has been guarded with a zealous care in our republic from the beginning, where the individual rights of the citizen have justly been considered the great corner stone of liberty. However, there are certain limitations of individual privilege, essential to the public good, which are generally conceded. Thus the law guarantees, under certain penalties, reasonable individual safety in the passage upon the public highways, often looked upon by property holders as onerous; safety in the proper construction of buildings; the enactment of sanitary laws; the protection of the people from the sale of adulterated milk; unwholesome and improper food; restrictions upon the sale of drugs, poisons, etc.; and the rights of women, of minors, of the insane, are carefully guarded.

Ought the people to exact guarantees, in their

own protection, from their public servants? Under the law, where monetary interests are involved this is universally conceded. The bond must be given for the proper execution of the trust. Should this pertain to the professions? We complain of lawyers, as a class, and say they too often play the part of the fox in the fable, which divided the cheese for the ravens; but the public confides to their keeping comparatively a minor trust, however great the property interest; yet who would think of employing a lawyer who had not been examined for admission to the bar? Correctly speaking, without such admission he is

not a lawyer.

We feel that he who ministers to us in sacred things must be touched with the divine afflatus of his calling; yet even with such prerequisite, who would consider this all? He rather must be drilled and schooled by long years of study before he can worthily become the public teacher, the wise, trusty adviser. Not a man attending our great Association held here this present week, but has called to his aid the motor forces of steam, this modern miracle of transforming, civilizing power of our century; yet who would have invoked Heaven's blessing on his journey, or have quietly retired to his slumbers in car or cabin, unless he had reason to believe a trusty, trained brain and arm held guidance over this force mighty to destroy as well as serve? The attorney-at-law practises in open court, under the scrutiny of an opponent and the direction of a judge, yet these are not considered sufficient safeguards to the noble profession counted a synonyme of justice; each applicant to practice must be examined and, after admission, complaints of improper conduct made against an attorney-at-law are inquired into and, if found of sufficient importance, his license may be revoked. The physician holds, on the contrary, a far different relation to his client. Assuming that both clients are equally ignorant upon the subject for which they seek advice. the one, at the worst, is under the influence of his passions, the other of disease; the one capable to judge with his usual wisdom the general conditions of the problem, the other in a possible perversion of every faculty. The physician advises for the most part in the solitude of the sickchamber, unwitnessed by opposing council, unwatched by learned judge. The one advises upon questions of necessity of a lower order and value, the other takes into his keeping the vital interests of life itself. Therefore, granted that the average honor and moral restraint are equal in both professions, the deduction seems clear that the medical practitioner, if either, should be held by law under the closer supervision. This question is by no means new and only theoretical. Testimony from experience, actual, long-continued practical working of law, is abundant. The older civilizations of Europe have, for centuries, held in careful control the welfare of the people, by allowing no one to assume the title of "Doctor of Medicine" and practise his profession until he has given evidence of his fitness therefor by examination before a proper tribunal. I shall never forget my indignation when I found, during my residence in Germany as a post-graduate student, that not a single apothecary in the great city of Berlin was allowed to fill my prescription given a sick friend. I fear I contrasted unfavorably the royal mandates of Prussia with the wider democratic liberties of our own republic.

The Dominion enacted a wise law for the regulation of the practice of medicine, which has continued in most satisfactory operation. This led to the inauguration of a general movement in the United States, which has already resulted in more or less efficient legislative supervision in the larger number of our states. A careful digest of these laws has been made by Dr. John H. Rauch, of Illinois, and published in a very con-

venient handbook. The American Academy of Medicine was organized for the especial purpose of elevating the standard of medicine in America. The very efficient secretary, Dr. Richard J. Dunglison, of Philadelphia, has made careful annual reports of the operation of these laws in the various states. The exceedingly valuable work accomplished in Illinois and West Virginia, chiefly through the enterprise and indefatigable labors of the secretaries of the state boards, Drs. Rauch and Reeves, is known to you all. Several of the other states are agitating the question, the present year, before their respective legislatures. Prominent among the number is our old commonwealth of Massachusetts.

The history of legal medicine in this state has more than a local interest, and a brief review will

prove instructive.

The Massachusetts Medical Society was incorporated in 1781. It was given "corporate powers; authorized to sue and be sued; to elect to membership; to suspend, expel, or disfranchise members; to make laws for the government of the Society; and was also authorized to issue letters testimonial, under the seal of the Society, to such as were found skilled, to the approbation of the examiners, as medical practitioners. A penalty of one hundred pounds sterling was fixed upon the Society and its officers if they should obstinately refuse to examine any one who presented himself for examination." In 1788 it was required "to prescribe such a course of medical and surgical instruction, and such qualifications, as they should judge requisite for candidates for the practice of physic or surgery, and to cause the same to be published annually in one or more newspapers in each of four medical districts provided for in the state." In 1802 "the examiners and censors of the Society were required to examine all who should offer themselves to be approved as practising physicians or

surgeons, who had received such an education as was, or might be from time to time, prescribed by the regulations of the Society." An applicant need not be a graduate of any college, but, "anybody who came up to the published standard was entitled to examination and to be licensed if found qualified; and they were required to give every candidate whom they should approve a license to practise physic or

surgery, or both."

In 1819 the Massachusetts Medical Society was authorized "to appoint examiners in each county, who should examine all applicants who had pursued the course of study required by the Society, and give license to such as were found qualified according to that standard, and also provided that every person licensed by the Society to practise, should file a copy of his license with the town clerk of the town where he practised." It was further provided by an act in 1818, that "any person who had been admitted to the practice of physic or surgery out of the commonwealth, and had come into it to pursue the practice of the same, might present himself to either of the boards of examiners in the various districts as a candidate for examination. and if they were confident that the candidate had received an education agreeably to the regulations provided by the Society, they might license him without subjecting him to a new examination." In 1819, act in addition to said act, which provided that "no person entering into the practice of physic or surgery after the first day of July, 1819, shall be entitled to the benefit of the law for the recovery of any debt or fee for his professional services, unless he shall, previously to rendering these services, have been licensed by the officers of the Massachusetts Medical Society, or shall be graduated a doctor of medicine in Harvard University."

This interesting chapter in the history of the

legislation of Massachusetts must be considered only in connection with the development of medical learning in America. When the Massachusetts Medical Society was organized and for many years after, the larger number of physicians were taught only by the method of preceptorship, a kind of indenture, so to speak, by which the student was taken into the family and taught the various branches of his art, the compounding of medicines included. A very few of the more favored class were graduated from the European universities. As centres of medical teaching developed and degrees were granted therefrom, the necessity for such supervision by the Society became less, and as we have seen, in 1819, by legislative enactment, the degree of doctor of medicine from Harvard University was considered as equivalent to the license of the Society, since both were under state supervision. In the revision of the Gen. Statutes in 1850 the power to prescribe a course of study and determine the qualifications of physicians and surgeons was omitted in the new codification, since it was assumed that the colleges were in ample power and constituted better custodians of such requirements. Much emphasis has been placed upon this history of legislation, and it has been declared that Massachusetts has had experience which caused her to revoke any and all laws looking to the supervision of the practice of medicine. At the most this is a bare inference, and so far as I have been able to ascertain, no case ever occurred where it was even charged that the authority conferred upon the Massachusetts Medical Society was in any manner used to the detriment of the public good. Hon. J. H. Benton, Ir., a learned counselor of law in Boston, made a long and labored argument, March 6, 1885, before the Committee on Public Health of the Massachusetts legislature, to whom this question of legal supervision of the practice of medicine had been referred. (I am told the service was rendered for a very large fee, paid by a much advertised "Professor" from New York, who favors Boston with his learning since the registration law of New York prevented him from longer practice in that metropolis.) Even Mr. Benton failed to find a history of detriment to the public good during the more than two generations of the supervision of the Society under legal requirement. He further states that we have got on very well in Massachusetts for the last quarter of a century without state supervision. This can only be accepted as a lawyer's interpretation, for the facts are too extraordinary for recital. In Boston alone there are a larger number of so-called doctors who are offering their services to the public, who have not graduated from a reputable medical college, than all the graduates of the various schools combined. But this is not the worst side of the lack of legal supervision. Even houses of disrepute are covered by the name of "Dr. -," and our newspaper columns contain advertisements, under the guise of so-called medical treatment, which mislead and bring to ruin, soul and body, multitudes of both sexes. Abortionists, despite the penal code, flourish at the low fee of ten dollars, so rarely are there convictions under the present laws. One Mrs. Bemis came to her death from having been for a period of two or three days kept wrapped in flannel saturated in kerosene oil, by the order of one "Dr." Pierce. Conviction followed under the ruling of Judge Pitman. "It is not necessary to show evil intent; if by gross or reckless negligence the defendant caused the death, he is guilty of culpable homicide." A sentence of six years in state's prison was rendered.

From this it has been argued that under the existing law the protection is ample. Shall we be content to say, Why care we for thieves if they

are punished for their depredations? It is not alone "negligence, even if gross or reckless," from which the public should seek protection, but the rather ignorant men unfitted for their calling, the malicious and designing who seek out the thoughtless and unwary to their detriment and

injury.

Let the title of "Doctor in Medicine." the name given by the schools to the graduates of the universities during the centuries, be a guarantee to the public that the one who assumes such title has in evidence thereby been, in a certain degree at least, fitted for the responsible position of attending upon the people in their illness. Let this title again be further qualified by state supervision, that the public may have further guarantee of fitness. This, in my own judgment, is the first requisite of legislation, and if all others be prevented from assuming to practise medicine under this title, the protection of the public interest is ample. The first appears simple and fundamental; the second demanded, because in the multiplicity and rivalry of the schools of medicine the state standard of requirement will be much more likely to secure uniformity and excellency of qualification. This subject is by no means, as has been so often asserted, a question between the different schools of medicine. It is the differentiation between learning and ignorance, competency and incompetency. Says Mr. Benton: "If he does not cure me; if he is negligent; if he has not the skill which he assumes to have, why, then, he is liable to me in damages. If he is grossly and wilfully and presumptuously ignorant and negligent, and he injures me, he is liable criminally. I need no other protection. The people need no other protection."

Does locking up the thief return the property; the incarceration of the incendiary rebuild the house; the hanging of the murderer restore the life? We punish to restrain and prevent such crimes. Would the public justly tolerate a class trained to steal, burn, or murder? Is it supposable that the shipwrecked crew would excuse the pilot who claimed he did not know the water in the channel was not sufficiently deep to float the noble ship with her priceless cargo? It was his

business to know.

The fallacy in the arguments of nearly all who have opposed legislation is the unproved and unwarranted assumption that a certain limited class of physicians, stigmatized as "oldschool" allopaths, regulars, etc., are the only parties interested in securing such legislation. Nothing is further from the truth, and it is my own conviction that, aside from the desire which should actuate all honorable men to lessen, as far as possible, a recognized evil and to elevate a profession, with the honor or shame of which they are indissolubly connected, few, if any, would be found to advocate legislation except as a most disagreeable duty. At the annual meeting of the Homæopathic Medical Society of Massachusetts, held last month in Boston, the president, Dr. J. H. Smith, in his address said: "The profession in general and a few of the leading medical colleges recognize that this country is overrun by a swarm of incompetent practitioners. The more influential societies of America have united to raise the standard of medical education, and also of admission to professional studies. The day is approaching when, with justice, physicians may ask protection of the state of the special title of 'Doctor of Medicine' from being dragged in the mire of ignorance and sloth; and no one can fairly object to the passage of a bill providing for the inspection of diplomas and a proper registration. Whenever this shall be accomplished they may properly be regarded as members of the public service, and as such, a kind of board of health at large, having definite

powers and entitled to adequate compensation in the courts, to exemption from jury and military service, and to protection against the assumption of their distinctive title, 'M.D.,' by people without inspected and approved diplomas." This society has unanimously petitioned the present legislature for some act of supervision of the medical practice within the state. Dr. John Perrins, in the annual address upon "Medical Legislation" before the Massachusetts Eclectic Medical Society in 1882, said: "To enforce colleges to do their whole duty should be the first step taken by our law makers. After that is done it should be then a criminal offence for a person, under any circumstances or for whatever purpose, to make use of any title which is granted by a legally constituted college or body to which he is not duly and properly entitled. The province of legislation in a free country like our own is to protect the people from deception and fraud. . . . The competent men of any school or business, the world over, do not need protection; and it would be both injustice and an injury to the people to have incompetent persons forced upon them by a monopoly. . . . We have laws in operation which will not allow the grocer to sell chicory and call it coffee; oleomargarine, and call it butter; but he may sell either for what it is. In this way the people are protected from fraud, and vet their rights are not interfered with in the least; neither the buyer nor the seller has any just ground for complaint. Why can we not have the same law applied to the practice of medicine? . . . I would not interfere with any persons entering upon the practice of medicine who wished to do so; but I would compel them to place themselves before the people in their true colors, reserving to the people their right to employ Thomas Jones or Mary Brown to treat them when sick, if they preferred."

I have quoted more fully from this thoughtful address, since it was written in *opposition* to medical legislation for the avowed distrust which he, as a practitioner of eclecticism, had in coöperation with other societies, to secure that which he so freely confesses would be for the public good.

It has also been claimed that, with all the pretence of medical teaching and the combined learning of the ages, "as yet there is no standard by which you can regulate the practice of medicine." Here again I suppose reference is made to the so-called schools and societies,—ethical differences which necessarily hold little part in

the science of medicine.

If the science of medicine is based upon the knowledge of the human body in health and disease, and the art of cure consists in the application of that knowledge to the readjustment and harmonious working of nature's laws, have we not in this a just and well recognized standard for guidance! Is not surgery in large measure demonstrated by an intimate knowledge of a multitude, it is true, but of objective factors?

The sooner the public is disabused of the thought that the medical profession possesses the power, by the compounding of medicines under the split-footed & sign, invoking thereby the benediction of Jupiter, and thus exorcising our physical evils, or granting absolution of our physical sins, by the administration of drugs, the better for all. Says a learned objector, "All we want to preserve is the right of every man and woman of full age and sound mind to have such person minister to them in disease or sickness as they wish." This, indeed, should be fully granted. However, let every man do business under his right name and title. If those claiming divine guidance to cure by the laying on of hands, can restore to health, Heaven speed the effort. If so-called Christian science brings

into relationship the laws of God and man for the cure of physical ill, the sooner its claims are demonstrated the better. The contest is with ignorance and evil, not with knowledge or science, which in any of its multitudinous subdivisions of research we are willing to believe is

divine, is Christian.

Many are the so-called trade marks in life. Medicine, as a science, was supposed to be as broad as humanity and its ills; and, notwithstanding the blundering which is necessary in all experimental research, none have doubted the efforts of the past as equally honest and sincere as those of the present. Investigation has never been under the ban of the medical profession, but on the contrary, encouraged ever since the days of the alchemist. Homocopathy secured to itself the distinction of an abstract theory, to which few of its followers give more than a quasi-approval. Eclecticism claims the power of selection, freely granted since the days of Hippocrates, and yet by a contrariety of terms, this freedom is emphasized by the rejection of all save botanic remedies. Our spiritualistic friends claim aids supernal, equal to their physical salvation from suffering, yet they freely confess it is limited to a narrow working of a hidden force, which as yet they are permitted to see as "only through a glass darkly." As the latest of modern revelations comes the new assumption of "Christian science." These teachings of the Divine Master, at the most but improperly understood, and their benefit lost during all these centuries, until now these new disciples declared the revealed will. The assumption is extraordinary. Its boldness, very audacity, challenges a sort of admiration and wins favor.

I quote from its great feminine apostle in her latest publication: "Christian science must be interpreted spiritually; until thus discerned it should not be judged. To have fair play I offer to clergymen gratuitous instruction; if they give me this chance I will guarantee they shall understand Christian science sufficiently to demonstrate it conclusively by healing the sick." We cannot wonder such a trade mark, no matter how honestly assumed, brings upon it the denunciation of the leaders in theological teaching; and the only reply to such opposition is fittingly their own, as in their effort to secure sympathy, they, in this nineteenth century, compare themselves to the martyrs of old. To limit the Christian workings of religion in science to the cure of disease, an infraction or modification of physical law, must be considered, from any standpoint, at least reprehensible, and most persons would concede that while spiritual things are to be interpreted spiritually, the converse of the proposition would hold equally good. Let the laws of petition to Almighty God be better understood, and our faith in a personal deity would be greatly increased. It seems but yesterday when the prayers of a great nation were offered for the restoration to health of our late lamented president Garfield. The bacterial colonization and development went on, however, under the law of its own reproduction, uninterruptedly, to his death. What more pertinent illustration than that of Christ in his rebuke of the tempter, that the law of gravitation should be held in abeyance, in his special instance, by the Father's interposition! If miracles are again to be inaugurated, they should work now, as of old, for the establishment of a principle, rather than for a personal good.

We think we have already clearly shown that the supervision of the practice of medicine does not belong to the so-called "class" legislation, but is in recognition of a need as universal as the

ills of humanity.

It is too late to claim that such measures are exceptional, in the interest of the individual,

unconstitutional, etc. Twenty-six states have already passed laws in remedy of a great evil. The supreme courts have affirmed the constitutionality of these measures. Last month North Carolina passed an enactment, making her laws regulating the practice of medicine yet more effective. The present month, the Medical Examining Board of Virginia held its first meeting, The examination was a written one, and the lists of questions are now published. Twenty-five applicants, all but one, graduates from reputable medical colleges; six were rejected.

The extraordinary advances in modern mediical science have kept pace with other departments of learning. Many states have very properly recognized this by the establishment of boards of health, and their efficient working is acknowledged in the diminution and control of disease. In the solution of the difficult problems pertaining to the infectious diseases, their laws of development and their control, what wiser service for the public good could our legislators enact, than provisions for their better study and

knowledge?

Conservative Germany, as well as republican France, has won imperishable glory and renown, by such investigation; and benefits have accrued

deserving the world's gratitude.

Aside to the questions pertaining to the physical well being of her inhabitants, untold millions of America's wealth are invested in her flocks and herds, upon ten thousand times ten thousand hills and plains. How little do we know of comparative pathology, and how few men have we fitted to teach the lessons of profit to be derived therefrom!

May our new National Board of Health be seconded in its wise efforts, by the profession of our entire country.

Let the states provide for the establishment of their own laboratories, for the study of the diseases within their borders. May the medical profession, in accord with the history of the past, continue on in the even tenor of its noble calling, content to feel that the highest ambition of its members is found in the alleviation of suffering and the restoration to health; and if an honest man is the noblest work of God, that he must necessarily be mens sana in corpore sano.











